

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. R-06/09-319
)
 Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Office of Vermont Health Access (OVHA) denying her request for an exception under M108 for coverage for dentures under the Medicaid program. The issue is whether the petitioner has shown that serious detrimental health consequences will occur if she does not receive dentures.

FINDINGS OF FACT

1. The petitioner is a sixty-year-old with a history of serious medical problems, including liver disease, ineffective esophageal motility, chronic nausea, orthopedic problems, constipation, hypertension, depression, asthma, dental problems, and problems with digestion and choking. In March 2009 she requested Medicaid coverage for tooth extractions and dentures.

2. There is no dispute in this matter that several of the petitioner's doctors have noted that the petitioner's inability to chew her food properly contributes to her

esophageal and gastric problems, and that those problems appear to be worsening.

3. A hearing in the matter was held on August 7, 2009. At that time the petitioner produced several pages of additional medical records, treatment notes, and her own written description of her problems. The Department agreed to review this evidence, but in a decision dated September 11, 2009 it informed the petitioner and the Board that its review had not resulted in a change in its decision in the matter.

4. In two thorough and detailed decisions dated June 9 and September 11, 2009 OVHA denied the petitioner's request for M108 coverage for dentures, concluding that the above reports did not demonstrate either that her condition was unique, that serious detrimental health would occur if she did not have dentures, or that appropriate alternative forms of treatment, including better food selection and changes in preparation, were not available or appropriate.

5. The hearing officer has read and considered all the medical evidence that has been submitted to OVHA in the petitioner's behalf. There is no question that the petitioner is seriously ill from a plethora of medical problems, many of them related to food intake. Unfortunately,

however, none of the petitioner's doctors have addressed what the Department has correctly and clearly identified to be the key issue in the case—whether there are reasonable, practical, and medically viable alternatives to dentures to treat those problems.

6. Based on the medical evidence it cannot be concluded that the Department has abused its discretion in determining that the petitioner has not shown that modifications to her diet and food preparation could not accomplish most, if not all, same medical benefits as dentures, or that implementing such changes would be beyond the petitioner's wherewithal and capacity.

ORDER

The Department's decision is affirmed.

REASONS

As a cost-saving measure, the state has eliminated coverage of dentures for all adult Medicaid beneficiaries. W.A.M. § M621.6. However, OVHA has a procedure for requesting exceptions to its non-coverage, which requires the recipient to provide information about her situation and supporting documentation. M108. OVHA must then review the

information in relation to a number of criteria as set forth below:

1. Are there extenuating circumstances that are unique to the beneficiary such that there would be serious detrimental health consequences if the service or item were not provided?
2. Does the service or item fit within a category or subcategory of services offered by the Vermont Medicaid program for adults?
3. Has the service or item been identified in rule as not covered, and has new evidence about efficacy been presented or discovered?
4. Is the service or item consistent with the objective of Title XIX?
5. Is there a rational basis for excluding coverage of the service or item? The purpose of this criterion is to ensure that the department does not arbitrarily deny coverage for a service or item. The department may not deny an individual coverage of a service or item solely based on its cost.
6. Is the service or item experimental or investigational?
7. Have the medical appropriateness and efficacy of the service or item been demonstrated in the literature or by experts in the field?
8. Are there less expensive, medically appropriate alternatives not covered or not generally available?
9. Is FDA approval required, and if so, has the service or item been approved?
10. Is the service or item primarily and customarily used to serve a medical purpose, and is it generally not useful to an individual in the absence of an illness, injury, or disability?

The Board has held that M108 decisions are within the discretion of the Department and will not be overturned unless OVHA has clearly abused its discretion by either failing to consider and address all of the pertinent medical evidence under each criterion set forth above or by reaching a result that cannot be reasonably supported by the evidence. The Board has consistently upheld the Department's denial of M108 exceptions for dentures in cases where the individuals did not demonstrate that the lack of teeth would likely result in serious detrimental health consequences given the availability and appropriateness of alternative means of maintaining proper food intake and nutrition. See, e.g., Fair Hearing No. T-03/08-97.

In this case, based on the evidence that has been submitted on the petitioner's behalf, it cannot be concluded that OVHA has abused its discretion in its assessment that the petitioner has not demonstrated that maintenance of her physical or mental health depends on being provided with dentures.¹ In light of the above, the Board is bound to

¹ The petitioner is again advised that she can reapply for an M108 exception for dentures if she can obtain such evidence. She is also encouraged to show this decision to her medical providers so that they may better understand the legal standard for coverage of dentures, and specifically address those standards if they feel the petitioner meets them.

affirm the Department's decision. 3 V.S.A. § 3091(d), Fair
Hearing Rule No. 1000.4D.

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